

Vindicie Medio-Saxonice,

O R,

Tithes totally Routed,

B Y

MAGNA CHARTA

I N

A Reply to an Answer of
Middlesex Letter and Petition, in the
latter end of a Tract, called,
A Treatise of Tithes.

WHEREIN

The Invalidity of the said Treasurers Arguments are fully manifested, and the said Letter and Petition clearly vindicated from Error and Mistake.

B Y

AUG. WINGFIELD, A Member
of this present PARLIAMENT.

L O N D O N,

Printed by F. L. for William Larnar, at the Black-
more near Fleet-Bridge, 1653.

Printed by E. L. for William Law, at the Black-

more near Fleet-Street, 1673.

LONDON,

of this present PARLIAMENT.

Aug. WINGFIELD, A Member

BY

clearly vindicated from Error and Mistake.

And the said Letter and Petition

others Arguments are fully manifest-

The Invalidity of the said Treas-

WHEREIN

A Treatise of Taxes.

latter end of a Treatise, called,

Middlesex Letter and Petition, in the

A Reply to an Answer of

IN

MAGNA CHARTA

BY

These totally Routed,

O R,

Printed by E. L. for William Law, at the Black-

This is the first of an argument for Tithing; though by his
 Tithes totally routed, by Magna
 Charta.

HAVING perused a Treatise of Tithes sent by way
 of a Answer to its Opponents, by one, as it is con-
 ceived, of the long Robe; we thought fit to give
 him a friendly admonition, that though he pretend to be
 a well-wisher to Religion and Propriety; yet
 when he speaketh fair, men believe him not; for
 there are, it is to be feared, seven Abominations in his heart,
 who though his *Supplicious* *Prayers* be covered with de-
 cent, yet shall his wickedness be shewed before the whole Con-
 gregation. *Prov. 20. 29, 30.*

In his Epistle to the Reader, he discovers both his spirit and his
 pride; censuring his Antagonists, as clamorous malicious ig-
 norants, though perhaps in the judgement of unbiased Mode-
 rators, more learned; peaceable; and more Evangelically spi-
 rited than himself. But fearing lest his great *Dian* Tithes, the
 Nursery of contention and strife, should in these days of Resor-
 mation, and restauration of publique Freedom and liberty, like
Dagon before the *Ark*, fall to the ground and come to nought;
 he hath therefore, out of his worldly wisdom, judged it very op-
 portune both in reference to himself and also to his Clients the
 Tith-taking Priesthood and Impropricator) in this extremity of
 time, to force into his Aid a Catalogue of Acts of Parliament,
 though to little purpose, since few of them before the Statutes of
H. 8. intimate so much as a right, much lesse command the pay-
 ment of Parochial Tithes to Priests or others, as if this Respon-
 dent would make us all believe, that *Abominum Decima*, *Ab-
 omum Decima*, that where soever in any Statute the word

It is found, there is an argument for Tithing: though by his
author is a sort of showing that Tithing is a
law, and his Tith-taking measures have a long
time been in use, and that the Church is a
body, no more to make the ignorant, but
still to keep so, by perswading of us and our fore fathers, That
Tithes were first due by Divine Law, then by Canon Law, and
now by Statute Law, yet are we under the good people of Eng-
land resolved to be no longer deluded by them with their Para-
logisms, and deceitfull reasonings.

And therefore that we may no longer digresse by way of
preface, we shall now come to reply, and to examine those two
grand objections, which the Author of the said Treatise raiseth
against the *Middlesex* Letter and Petition in the Expository o-
pening of those two Statutes of *Magna Charta*, ch. 19. and 1. R.
2. ch. 14. where this Respondent saith pag. 13. That for the Penner
of the said Letter and Petition to make the People believe, that the
payment of Tithes is against *Magna Charta*, is such an exposi-
tion as was never made upon that Statute, and therefore to re-
fute this Error (as he calls it) he hath laboured, though in
vain, to overthrow the said exposition and those invincible ar-
guments built upon it, and to set up his own contrary interpre-
tation and false assertion, (*viz.*) That Tithes and the pay-
ment thereof by the people were confirmed by *Magna Charta*,
ch. 11. under the Notion of Church rights.

And first for proof thereof he saith, pag. 14. That by the Com-
mon Law of this Land, at the confirmation of *Magna Charta*,
Ecclesiastical persons had remedy to recover their Tithes in the
Spiritual Court, and then concludes, that the Law gives no re-
medy but where there is a right, which assertion is very untrue.
For Cook upon Tithes saith, That by the Common Law Lands
are undecimable, and if undecimable, then certainly by that
Law there can be no Church right to Tithes, neither to be re-
covered by virtue thereof in the Spiritual, or Popes Court,
Since the people of England were not bound in Law by his Can-
ons. Neither is Cook single in his opinion, For *Selden* sa, 291
saith, That Arbitrary disposition of Tithes used by the Laity, as
well *de jure*, of right, (as the positive Law then received and
practiz'd

practised was) as *de facto* deed and practice, which *was* remembered in his Complaint to the King and Parliament under E. 1. The substance whereof in brief is; That the proud and pompous Priests did constrain the poor People of England (viz. by Popish Canons) to pay their Tithes unto them, whereas within a few years before, they paid their Tithes and Offerings at their own free will and pleasure. Which is also attested by *Ludlow* a Judge of Assize in E. 3. who saith, That in antient time a man might give his Tith to what Church he would; which is true *Thyes Judge Brook* in Abridging the case: *Selden fol. 252.*

And the said Author further saith, *fo. 290.* That under *Innocent* the 3d. it was usuall in fact for Laymen by the practice of the Law at that time both Common and Canon, to convey the right of their Tithes, as Rent-charges or the like, to what Church or Monastery they pleased; and such Conveyances were clearly good. And whereas the Author of the said Treatise, p. 14. quoteth Mr. *Selden* for his Authority of Parochial right, he is clearly mistaken, since Mr. *Seldens* judgement in the same place immediately following is clearly to the contrary, and that which is here alleged as the Treatisers main Argument, is nothing but the opinion of the Canonists recited by Mr. *Selden*; and by him in the same and following pages fully confuted; *pag. 144; 146.*

Moreover *Magna Charta* is, by Act of Parliament made in 25 E. 1. called the Confirmation of the Charters, adjudged and declared to be the Common Law of the Land; which if true, as it is most true, then Tithes being not so much as named, much less confirmed by *Magna Charta*, are not due by the Common Law, (as the said Respondent weakly supposeth) and so nor at all under Ecclesiastical cognisance.

But he objecteth and saith, That Tithes are captained in these words, *The Churches Rights, Mag. Char. cap. 1.* for further satisfaction whereof, see *Cooks* exposition upon the very same words, where he saith, that Ecclesiastical persons shall enjoy their lawfull jurisdictions, and other their rights (but not one word of Tithes) without diminution, and that no new Rights were given unto them hereby, but such as they had before confirmed: Now if no new Rights were given, then not Tithes, since the Author of the said Treatise confesseth p. 14. that the Common Right of Tithes due to the Rector of the Parish, is but from the time of R.

John, and then; as *M. Selden* (whom he quoteth) p. 148. declar-
eth, not so much as in opinion established, whereby it is evident,
not onely by *Selden* and his own confession, but also in the judg-
ment of *Cook*, that at the confirmation of *Magna Charta*, Tithes
were not at all comprehended in the Rights of the Church.

Which will yet more fully appear if we consult *Mr. Selden*'s
book of Tithes, and the Roll of *Winton*. In the first whereof pag.
137: It is delivered for a clear truth, that there never was any
Canon of any General Council as yet found, that positively com-
manded payment of Tithes, nor any that expressly supposed them
a duty of Common right, before the Council of *Lateran*, under
Pope *Innocent* the 3^d. 1615: So that at the Council of *Lateran*,
which was in the latter end of *K. John*, and but 12 years or there-
abouts before the confirmation of *Magna Charta* by *H. the 3^d*.
Tithes were not due by common right, that is by Common Law,
and so consequently no rights of the Church. And if, not then
due by Common Law, then certainly not at the confirming of
Magna Charta, since in the judgment of all, both Canonists and
Common Lawyers, 12 years is not a competency of time, either
for custom, or prescription, the one allowing 40 years at least,
the other time out of mind.

And yet to proceed; this Respondent doth further acknow-
ledge, p. 14. that there was no Parochial Right of Tithes till af-
ter the Council of *Lateran* aforesaid, 1615. and that after the
Decretal Epistle of *Innocent* the 3^d sent to the Arch-Bishop of
Canterbury in the year aforesaid, the right of Tithes was allowed
(but you must know by whom, (*viz.*) the Pope and his Clergy,
not the People) and so became *Lix Terra*, a Law of the Land,
which are likewise the words and judgement of *Cook*: Now of
what force and validity, a Right of Tithes, grounded upon a Ca-
non of the Pope, and diametrically repugnant to *Magna Charta*
can be, let all men judge; since *Cook* their Oracle hath declared
in his Chapter of Tithes, that all Canons which are against the
Common Law, or Custom of the Land, are of no force.

Now as to the Roll of *Winton*, called by some *Doomsday Book*,
which was a survey of all the Lands & Revenues both of Clergy &
Laity, exactly taken by Commiss. in every County throughout the
Nation, and returned into the Exchequer about the latter end of
the *Conquerours* Reign, It is there Recorded in particular what

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the Revenues and dues of every Presbyter and Church wite, but yet notwithstanding very rarely, if at all, are any Tithes found among the Church Revenues. So that hence it is most cleer, First, that in *William the Conquerors* time, Tithes were no Revenues nor rights of the Church; nor yet Secondly, in *Hi. 2.* his time, by the Letter and Petition, p. 7. And lastly, by the Authors own confession they became due onely but from the latter end of *K. John* Reign, and that grounded merely upon a Popish Canon, contrary to *Magna Charta*, which is acknowledged by the Learned, to be the Common Law of *England*, both before and after the Conquest.

The second and last objection which the Author of the said Treatise maketh, is upon our exposition of the Statute of *1 R. 2. cap. 14.* which wee shall here make good to be most genuine and true; notwithstanding his false calumniation; and that his Anticipation is most absurd and false, and such as had not Custom wrought another Nature in him, to speak and write untruly, could never have fell from him. Now the question between us is, whether the *Averments* there spoken of be *Lay Averments*, and so to be made by the Plaintiff, according to his exposition, or *Church Averments*, and so to be made by the Defendant, according to our exposition: whether of which is most true, we shall leave to every one to judge, by opening unto you the Nature of *Averment* out of the judgment of the Learned, and by holding forth such reasons as shall in brief be produced.

And first *Cowells Interpreter* saith, That *Averment* signifieth (according to the Author of *Terms of the Law*) an offer of the Defendant to make good or to justify an exception pleaded in abatement or bar of the Plaintiffs Act. And *Sir Hen. Smith* in his book of Law fo. 359 also saith, That *Averments* must be offered to be proved true in Barrs. 1. Answers, Replications, Rejoinders, &c. but not in Counts and Declarations. And of the same judgement is *Sir Edw. Cook*, in his first part of *Institutes* fo. 362. So that it is evident, *Averments* are properly to be made by Defendants in their answers, or in after pleadings, and not by Plaintiffs in their Declarations: unlesse in some few particular cases, of which this is none, as is evident, not only by the Grammatical, and Logical Construction of the said Statute, but

even

...of the Court of Chancery, who raised the question
out of doubt, that it is down in the margin of his Abjuration
of the Oath, to be Church & State, which we did
not intend to be the subject of the question.
in the year 1644, for the payment of
Tithes, which we consider it to be the judgement of all the
wise men of that age, no longer validity than during Parliamentary
Sessions, but now dissolved upon grounds of Policy, Rob-
berson, right, reason, and justice, and that now
the Generall consent of the major part, either previous
or subsequent, of the Supreme Authority, the People.

Now by what hath been said it will easily appear, who doth
most abuse and mislead the People, and whether imposition of
Agains Gbarrs and the other Sacraments, is more than that
of the latter and Position, backed with right reason, and the
Authorities of great Lawyers and learned Judges, or that of the
Author of the Treatise, being a fancy of his own brain, and raised
out of implicate Terms, which he that believes, had need of
of a Posh and implicate faith.

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